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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SANDRA L. FERGUSON,

11 Plaintiff,

12 v.

13 BRIAN J. WAID AND THE WAID
14 MARITAL COMMUNITY,

15 Defendants.
16

Case No. C17-1685RSM

ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON CIVIL HARASSMENT
CLAIM

17 This matter comes before the Court on Plaintiff Sandra L. Ferguson's Motion for Partial
18 Summary Judgment on Defendant Brian J. Waid's Civil Harassment Counterclaim. Dkt. #71.
19 For the reasons stated below, the Court DENIES this Motion.
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21 **I. BACKGROUND¹**

22 Plaintiff Sandra L. Ferguson and Defendant Waid are both licensed attorneys in the
23 state of Washington. See Dkt. #1. In July of 2017, Ms. Ferguson published a "client review"
24 of Mr. Waid on the attorney-rating website Avvo.com. Ms. Ferguson's review stated, in part:
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26 I am an attorney. However, the opinions expressed in this review
27 are based on my personal experience as a former client of this
attorney, Brian J. Waid. I consulted and retained Brian Waid in

28 ¹ For purposes of this Motion for Partial Summary Judgment, the Court will limit its discussion of background facts to those relevant to the civil harassment counterclaim only.

1 April 2011 regarding a contact [sic] dispute matter. He represented
2 me until December 10, 2012, the date he abandoned me on a false
3 pretext while an important motion was pending. Let me state it
4 unequivocally: Brian J. Waid is a PREDATOR and a FRAUD. He
5 should be prosecuted as a white collar criminal. However, this
6 decision is not within my control. But I can write this review to
7 warn and hopefully, prevent others from becoming future victims
8 of Attorney Waid. I am not Waid's only victim. I assisted one of
9 his other clients to find capable counsel. We have both filed civil
10 suits against Waid for malpractice, false and deceptive business
11 practices, and fraud. . . . Here is what Waid did to me: (1) he failed
12 to enforce my priority lien over the money that was in dispute; (2)
13 he advised me to file a lawsuit instead of using a more cost-effect
[sic] procedure that was available, so that he could fraudulently
charge, bill and collect fees from me for his worthless legal
services; (3) he concealed and failed to disclose to me that he had a
conflict of interest; (4) he deposited and left \$265,000 of my
money in the court registry. . . he [] abandoned me, lying to the
court so that he would be allowed to withdraw over my objections.
. . . By similar methods, Waid's other client-victim was bilked of
hundreds of thousands of dollars by Waid and his co-counsel.

14 Dkt. #6-2.

15 Ms. Ferguson repeated these statements in a second internet posting on August 11,
16 2017, that was titled "This Lawyer Reported for Fraud." Dkt. #6-3. In addition to the above
17 statements, the second posting also stated that Mr. Waid "violated the professional ethics
18 rules," and had been reported by her "to the Washington State Bar Association and to law
19 enforcement authorities for engaging in criminal conduct (fraud)." *Id.*

21 Ms. Ferguson's claims in this matter have been dismissed with prejudice as meritless.
22 Dkt. #39. This Court has also granted Rule 11 sanctions against Ms. Ferguson for filing this
23 case. Dkt. #40. Ms. Ferguson has pursued three prior lawsuits against Defendant Waid. *See*
24 Dkt. #50 in *Caruso et al. v. Washington State Bar Association, et al.*, Case No. 2:17-cv-00003
25 (Ms. Ferguson failed in her attempt to add Mr. Waid as a defendant); Dkt. #87-1 (October 2014
26 Complaint filed in King County Superior Court); Dkt. #87-2 (December 2015 Complaint filed
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1 in King County Superior Court with a new case number). Plaintiff's claims in *Caruso* against
2 Defendant Waid were found to be procedurally improper and likely meritless. Dkt. #57 in
3 *Caruso*, Case No. 2:17-cv-00003. The first of Ms. Ferguson's state actions resulted in
4 dismissal with prejudice of a majority of Plaintiff's claims on summary judgment, and the
5 remainder were dismissed when Plaintiff failed to appear prepared for trial. *See* Dkts. #74-1
6 and #74-2. Plaintiff subsequently appealed the dismissal of her claims and that appeal was
7 dismissed for Plaintiff's failure to file an opening brief. *See* Dkt. #74-3. The second state court
8 action, filed immediately after her claims were dismissed without prejudice in the first state
9 court action, is currently stayed pending the outcome of an appeal.
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11 Defendant Waid has asserted counterclaims of defamation and civil harassment in this
12 case. Dkt. #6. The Court previously declined to dismiss the claim of defamation on summary
13 judgment, and that claim is currently proceeding to trial. *See* Dkt. #85. The civil harassment
14 counterclaim now before the Court, brought under RCW 10.14, seeks relief in the form of an
15 injunction preventing Plaintiff and others at her direction from engaging in further harassment.
16 *See* Dkt. #6.
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19 II. DISCUSSION

20 A. Legal Standard for Summary Judgment

21 Summary judgment is appropriate where "the movant shows that there is no genuine
22 dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.
23 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are
24 those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at
25 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of
26 the matter, but "only determine[s] whether there is a genuine issue for trial." *Crane v. Conoco*,
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1 *Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O'Melveny &*
2 *Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)).

3 On a motion for summary judgment, the court views the evidence and draws inferences
4 in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v.*
5 *U.S. Dep't of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable
6 inferences in favor of the non-moving party. *See O'Melveny & Meyers*, 969 F.2d at 747, *rev'd*
7 *on other grounds*, 512 U.S. 79 (1994). However, the nonmoving party must make a "sufficient
8 showing on an essential element of her case with respect to which she has the burden of proof"
9 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

10 11 **B. Civil Harassment Counterclaim**

12 Under Washington State law, to prevail on his counterclaim for civil harassment, Mr.
13 Waid must demonstrate that Ms. Ferguson engaged in "a knowing and willful course of
14 conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental
15 to such person, and which serves no legitimate or lawful purpose." RCW 10.14.020. "Course
16 of conduct" means "a pattern of conduct composed of a series of acts over a period of time,
17 however short, evidencing a continuity of purpose," but does not include constitutionally
18 protected free speech. *Id.* The course of conduct must be "such as would cause a reasonable
19 person to suffer substantial emotional distress, and shall actually cause substantial emotional
20 distress to the petitioner..." *Id.*

21 Ms. Ferguson argues in this Motion that her internet postings and lawsuits were
22 constitutionally protected free speech and that they do not otherwise fall under the requirements
23 above. Dkt. #71. Ms. Ferguson appears to contend that anything she has done cannot qualify
24 under the statute because she has not had actual, face-to-face contact with Mr. Waid in some
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1 time. *See id.* at 11. Ms. Ferguson argues that this claim will interfere with her pending state
2 court lawsuit. *See id.* at 17–19. Finally, Ms. Ferguson questions the Court’s ability to impose
3 the injunctive relief Mr. Waid is requesting without violating the First Amendment. *See id.* at
4 19–24.

5 Mr. Waid argues that Ms. Ferguson’s alleged defamation and filing of frivolous
6 lawsuits do not qualify as constitutionally protected free speech under the statute. *See* Dkt. #86
7 at 6–11. The Court has already considered the argument that “[a]ccusations of criminal
8 activity, even in the form of opinion, are not constitutionally protected. . . . No First
9 Amendment protection enfolds false charges of criminal behavior.” Dkt. #73 at 15 (citing *Vern*
10 *Sims Ford v. Hagel*, 42 Wn. App. 675, 683, 713 P.2d 736, 739 (1986). The Court previously
11 agreed with this argument, and found that Ms. Ferguson had stated that Mr. Waid engaged in
12 fraudulent and criminal activity in her internet postings. *See* Dkt. #85 at 7–8. The Court also
13 now finds that Ms. Ferguson’s prior lawsuits, if considered frivolous or baseless, do not qualify
14 as constitutionally protected free speech. *See Bill Johnson's Restaurants, Inc. v. N.L.R.B.*, 461
15 U.S. 731, 743, 103 S. Ct. 2161, 76 L. Ed. 2d 277 (1983).
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19 Mr. Waid argues it is a question of fact whether Plaintiff’s conduct in publishing the
20 defamatory statements and the filing of meritless lawsuits constitutes harassment under RCW
21 10.14.020. The Court agrees. If the jury finds that Ms. Ferguson’s statements about Mr. Waid
22 were false and her lawsuits frivolous, along with finding in favor of Mr. Waid on the other
23 elements of these claims, then Mr. Waid can obtain relief on this counterclaim. The statute
24 considers harassment that takes any “form of communication, contact, or conduct [including]
25 the sending of an electronic communication... RCW 10.14.020(1). Ms. Ferguson’s online
26 postings and lawsuits clearly qualify without a continuing pattern of face-to-face contact.
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1 There is no basis to dismiss this counterclaim as a matter of law and questions of fact preclude
2 summary judgment.

3 The Court also finds that this claim will not improperly interfere with Ms. Ferguson's
4 state court actions. Many of Ms. Ferguson's state court claims have been dismissed with
5 prejudice, and the remainder have been dismissed for procedural reasons based on her or her
6 attorney's failure to comply with timing requirements and failure to be prepared for trial. Ms.
7 Ferguson has failed to convince the Court that the jury in this matter would need to address the
8 underlying factual questions of her state court actions to determine whether or not these
9 lawsuits contribute to Mr. Waid's civil harassment counterclaim, and any evidentiary issues can
10 be addressed at or before trial.
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13 Finally, the Court finds that it can craft the appropriate injunctive relief if necessary
14 after trial in such a way as to address Ms. Ferguson's First Amendment concerns.

15 **III. CONCLUSION**

16 Having reviewed the relevant briefing and the remainder of the record, the Court hereby
17 finds and ORDERS that the Plaintiff Ferguson's Motion for Partial Summary Judgment on
18 Defendant Brian J. Waid's Civil Harassment Counterclaim, Dkt. #71, is DENIED.
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21 DATED this 12 day of June, 2018.

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24 RICARDO S. MARTINEZ
25 CHIEF UNITED STATES DISTRICT JUDGE
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